153 U 8584

RECORD, CASE No. 15,299.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 922.

NELSON F. EVANS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED APRIL 21, 1893.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 29, 1893.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between The United States, plaintiff, and Nelson F. Evans, defendant, No. 50, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 13th day of March, in the year of our Lord one thousand eight hundred and ninety-three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

1½ [Endorsed:] No. 50. May sess., 1892, of indictments. Dist. court U. States, east'n dist. of Penna. The United States *vs.* Nelson F. Evans. Writ of error from the Supreme Court of the United States. Lodged in clerk's office March 22nd, 1893.

On the 21st day of March, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared William B. Spittall before me, a commissioner of the circuit court of the United States for the 3rd circuit, and makes oath that he delivered a true copy of the within citation to the Honorable William Butler, judge of the district court of the United States for the eastern district of Pennsylvania.

WM. B. SPITTALL.

Sworn and subscribed to the 21st day of March, A. D. 1893.

[Seal Henry R. Edmunds, U. S. Commissioner, Philadelphia, Pa.]

HENRY R. EDMUNDS,
United States Commissioner in and for the Eastern District of Pennsylvania.

2 UNITED STATES OF AMERICA, *ss:*

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the eastern district of Pennsylvania, wherein Nelson F. Evans is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand eight hundred and ninety-three.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

2½ [Endorsed:] No. 50. May sess., 1892, of indictments. District court U. States, eastern district of Penna. The United States *vs.* Nelson F. Evans. Citation on writ of error and proof of service. Lodged in the clerk's office March 22, 1894.

On this 21st day of March, in the year of our Lord one thousand eight hundred and ninety-three, personally appeared William B. Spittall before me, the subscriber, a commissioner of circuit court of U. S., 3rd circuit, and makes oath that he delivered a true copy of the within citation to Ellery P. Ingham, U. S. district att'y.

WM. B. SPITTALL.

Sworn to and subscribed the 21st day of March, A. D. 1893.

[Seal Henry R. Edmunds, U. S. Commissioner, Philadelphia, Pa.]

HENRY R. EDMUNDS,
United States Commissioner in and for the Eastern District of Pennsylvania.

3 In the Supreme Court of the United States.

To the Honorable George Shiras, Jr., associate justice of the Supreme Court of the United States:

The petition of Nelson F. Evans respectfully represents—

That he was indicted in the United States district court for the eastern district of Pennsylvania upon three bills of indictment, entitled respectively as of May sessions, 1892, Nos. 49, 50, and 51, which bills were treated as parts of one indictment.

That he filed special demurrers to the several counts in each indictment not nol-prossed by the United States, which demurrers were overruled, and that after having pleaded "not guilty" to said indictments he was, after a trial by jury on the 5th, 6th, 7th, and 8th days of December, 1892, convicted upon all of said counts. Motions in arrest of judgment, with an assignment of special reasons,

were filed, and, being respectively overruled, he was on the 16th day of December, A. D. 1892, sentenced under two of said bills to an aggregate term of imprisonment for seven years.

He respectfully represents that in overruling said special demurrers and the motions in arrest of judgment error was committed by the trial court, and that he has been prejudiced and greatly damaged thereby, and that it is his desire to prosecute a writ of error to be addressed to the said district court for the eastern district of
4 Pennsylvania, in accordance with section 5 of the act of Congress entitled "An act to establish circuit courts of appeal and to define and regulate jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891.

He further represents that he has filed of record with the clerk of the court below a separate assignment of errors prior to the presentation of this petition, in accordance with the rules of the Supreme Court of the United States.

Wherefore he prays that a writ of error may be allowed in the premises, directed to the district court of the United States for the eastern district of Pennsylvania, and that a citation may be issued, returnable within thirty days, upon the entry of security in whatever sum may be directed.

And he will ever pray, &c.

NELSON F. EVANS,
By HAMPTON L. CARSON, *Of Counsel.*

5 UNITED STATES OF AMERICA, *ss:*

District Court of the United States for the Eastern District of Pennsylvania, May Sessions, 1892. No. 50.

Assignment of Errors.

1. The court erred in overruling the demurrer to counts 8, 9, and 10, the ground of said demurrer being that said counts were defective, in that there was no averment that the said defendant did not receive said notes as an agent for collection or to secure their renewal and subsequently failed to account for the same to the said Spring Garden National bank for proceeds or renewals; and, further, because there was no averment that the bank did not, either at the time of surrender or at any subsequent time, receive security, value, or renewal notes therefor; and, further, because there was no averment that the bank has been in any manner a loser thereby.

2. Because the court erred in overruling the motion in arrest of judgment upon said counts, numbers 8, 9, 10, said motion in arrest of judgment being urged upon the ground that there was no averment that the said defendant did not receive said notes as an agent for collection or to secure their renewal, and subsequently failed to account for the same to the said Spring Garden National bank
6 for proceeds or renewals; and, further, because there was no averment that the bank did not, either at the time of surrender or at any subsequent time, receive security, value, or re-

newal notes therefor; and, further, because there was no averment that the bank has been in any manner a loser thereby.

3. The court erred in overruling the demurrer to counts 10 and 14, the ground of said demurrer being that said counts were bad, in that there was no averment that the president or cashier of the Spring Garden — bank, in discounting as president or as cashier the various notes therein described, acted in excess of their powers or outside of their regular duties, nor was there any averment that the president or the cashier was not the duly authorized officer of the said bank to discount paper, nor was there any averment that said discounts were procured by any fraudulent means, nor was there any averment that the said Nelson F. Evans was at the time of said discounts insolvent or knew himself to be so.

4. The court erred in refusing to arrest judgment upon counts Nos. 10 and 14, said motion in arrest of judgment being based upon the ground that said counts were bad, in that there was no averment that the president or cashier of the Spring Garden National bank, in discounting as president or cashier the various notes therein described, acted in excess of their powers or outside of their regular duties, nor was there any averment that the president or the cashier was not the duly authorized officer of the said bank to discount paper, nor was there any averment that the said discounts were procured by any fraudulent means, nor was there any averment that the said Nelson F. Evans was at the time of said discounts insolvent or knew himself to be so.

7

5. The court erred in overruling the demurrer filed to counts 82, 99, 102, 110, 111, 114, 117, 121, 124, 130, 131, 132, 134, 137, 140, 142, 143, 145, 146, said demurrer being based upon the ground that said counts were defective, in that they contained no averment that the overdrafts complained of were not according to the usual and customary course of banking or were contrary to the practice and contract between the said defendant and the Spring Garden National bank, or *or* that they were not loans, and that interest was not charged thereon, and that they have not since been paid, and that the bank is a loser thereby.

6. The court erred in refusing to arrest the judgment moved for upon counts 82, 99, 102, 110, 111, 114, 117, 121, 124, 130, 131, 132, 155, 137, 140, 142, 143, 145, & 146, said motion in arrest of judgment being based upon the ground that said counts were defective, in that they contained no averment that the overdrafts complained of were not according to the usual and customary course of banking or were contrary to the practice and contract between the said defendant and the Spring Garden National bank, or that they were not loans, and that interest was not charged thereon, and that they have not since been paid, and that the bank is a loser thereby.

8

7. The court erred in overruling the demurrer filed to counts Nos. 131, 132, and 146, said demurrer being based upon the ground that said counts were bad because they contained no averment that the said orders or charges against the said Nelson F. Evans, which on their face as displayed in said indictment were drawn and signed by Francis W. Kennedy, as president, were

made with the knowledge or consent or with the subsequent assent of the defendant, or that he had obtained or did obtain any moneys thereon.

8. The court erred in refusing to arrest the judgment moved for upon counts Nos. 131, 132, and 146, said motion in arrest of judgment being based upon the ground that said counts were bad, in that they contained no averment that the said orders or charges against the said Nelson F. Evans, which on their face as displayed in said indictment were drawn and signed by Francis W. Kennedy, as president, were made with the knowledge or consent or with the subsequent assent of the defendant, or that he had obtained or did obtain any moneys thereon.

NELSON F. EVANS,
9 By HAMPTON L. CARSON, *Of Counsel.*

Know all men by these presents that we, Charles T. Evans, as principal and Shepley W. Evans, and the City Trust, Safe Deposit and Surety Co., a corporation duly chartered under the laws of the State of Pennsylvania, as sureties, are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars ($500), to be paid to the said United States of America, their certain attorney; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of March, in the year of our Lord one thousand eight hundred and ninety-three.

Whereas lately, at the sessions of a criminal court held at Philadelphia, in the eastern district of Pennsylvania, in the month of November, A. D. 1892, in a prosecution in said court by the United States of America against one Nelson F. Evans, of said district, yeoman, upon certain bills of indictment, entitled May sessions, 1892, and numbered 49, 50, and 51, respectively, upon which, after sundry other proceedings, issue was joined and a trial had before the Honorable Wm. S. Butler, United States district judge for the eastern district of Pennsylvania, and a jury, upon the eighth day of December, 1892, and verdicts of guilty rendered against the said Nelson F. Evans, and he was sentenced, upon bill No. 50, to a term of five years' imprisonment in the Eastern penitentiary of the Commonwealth of Pennsylvania, and on bill No. 51 to two years' imprisonment in the Eastern penetentiary of Pennsylvania, said term to commence at and from the expiration of the previous term of imprisonment, and the said Nelson F. Evans conceiving that
10 manifest errors have happened, to his great prejudice, and having presented his petition for a writ of error to the Honorable George Shiras, Jr., associate judge of the Supreme Court of the United States, and having obtained an allowance thereof, and a citation directed to the clerk of the United States district court for the eastern district of Pennsylvania, commanding him to return the record, so that it be at a Supreme Court of the United States, to be holden at Washington, within — days from the date thereof: Now, the condition of the within obligation is such that

if the said Nelson F. Evans shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

CHARLES T. EVANS. [SEAL.]
S. W. EVANS. [SEAL.]
[SEAL.] THE CITY TRUST, SAFE DEPOSIT AND SURETY CO. OF PHILADELPHIA,
By CHARLES M. SWAIN, *Pres'd't.*

Sealed and delivered in the presence of—
HENRY RAINEY.

Attest: JAMES T. LYND, *Secretary.*

Approved by—
GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

I hereby certify that Charles T. Evans, Shepley W. Evans, and "The City Trust, Safe Deposit & Surety Co. of Philadelphia," the sureties above named, are good and sufficient for the full amount of the penalty of the bond.

Philadelphia, Mar. 10th, '93.

[SEAL.] CHARLES S. LINCOLN,
Clerk of the District Court of the United States for the East. Dist. of Pa.

11 In the District Court of the United States for the Eastern District of Pennsylvania.

Pleas before the honorable the judge of said court, of May sessions, 1892. No. 50.

It is thus contained:

THE UNITED STATES OF AMERICA
vs.
NELSON F. EVANS. } Indictment.

Be it remembered that at a district court of the United States in and for the eastern district of Pennsylvania, holden at Philadelphia on the seventeenth day of May, A. D. 1892, before the Honorable William Butler, judge of said court, by the oaths of Harry W.
12 Jayne, Albert E. Bailey, Charles M. Billmeyer, James F. Dailey, Daniel W. Gratley, John C. Blank, Jacob K. Greisemer, Samuel Griffith, John N. Kline, Frank Kunkel, William R. Nicholson, William S. Russell, and Edward A. Wright, and by the affirmations of J. Watson Craft, William W. Harkness, Mahlon N. Kline, Milton Lewis, Charles Lukens, William R. Pechin, Frank J. Shirk, William H. Sproul, and Joseph Waite, good and lawful men of the said district, then and there empanneled and sworn or

affirmed and charged to inquire for the said United States and for the body of the said district—

It is presented as follows:

13–22 In the District Court of the United States for the Eastern District of Pennsylvania, May Session, 1892. No. 50.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

The grand inquest of the United States of America, inquiring in and for the eastern district of Pennsylvania, upon their respective oaths and affirmations, respectfully do present— * * *

23 8. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, and fraudulently aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania, which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided), then and there to wilfully misapply a certain large amount of the moneys, funds, and credits then and there belonging to the said national banking association for the use, benefit, and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association—that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the day and year aforesaid, in the district aforesaid, and within the jurisdiction of this court, being then and there cashier, as aforesaid, of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently, and wilfully and with intent to injure and defraud the said national banking association misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of seventy-five hundred dollars, in the manner and by the means following—that is to say, a certain promissory note, dated, to wit, Philadelphia, November 10, 1890, made and drawn by a certain person, to wit, A. B. Nettleton, for the sum of, to wit, seventy-five hundred dollars, due and payable March 13, 1891, at the said bank, had been theretofore, to wit, upon the day and year aforesaid, discounted by the said bank, and was then and there overdue and unpaid, and held by the said bank as and for funds and credits, as aforesaid; whereupon, the said Harry H. Kennedy did then and there, with intent to injure and defraud the said national banking association, knowingly, unlawfully and fraudulently wilfully misapply the same, in that he then and there surrendered and delivered the same to the said Nelson F. Evans, without receiving

therefor for the said bank the said sum of seventy-five hundred dollars, or any part thereof; and the said Nelson F. Evans did then and there knowingly and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to wilfully misapply the said funds and credits of the said national banking association, as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

24 9. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there to wilfully misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the day and year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier as aforesaid, of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of seventy-eight hundred thirty-three $\frac{35}{100}$ dollars, in the manner and by the means following; that is to say: a certain promissory note, dated, to wit, Philadelphia, November 10, 1890, made and drawn by a certain person, to wit, A. B. Nettleton, for the sum of, to wit, seventy-eight hundred thirty-three $\frac{35}{100}$ dollars, due and payable March 13, 1891, at the said bank, had been theretofore, to wit, upon the day and year aforesaid, discounted by the said bank, and was then and there overdue and unpaid, and held by the said bank as and for funds and credits as aforesaid; whereupon, the said Harry H. Kennedy did then and there, with intent to injure and defraud the said national banking association, knowingly, unlawfully and fraudulently wilfully misapply the same, in that he then and there surrendered and delivered the same to the said Nelson F. Evans, with-

out receiving therefor for the said bank the said sum of seventy-eight hundred thirty-three $\frac{35}{100}$ dollars, or any part thereof; and the said Nelson F. Evans did then and there knowingly and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to wilfully misapply the said funds and credits of the said national banking association, as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

25–28 10. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there to wilfully misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the day and year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier as aforesaid, of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following; that is to say: a certain promissory note, dated, to wit, Philadelphia, November 25, 1890, made and drawn by a certain person, to wit, A. B. Nettleton, for the sum of, to wit, five thousand dollars, due and payable March 28, 1891 at the said bank, had been theretofore, to wit, upon the day and year aforesaid, discounted by the said bank, and was then and there *and* held by the said bank as and for funds and credits, as aforesaid; whereupon, the said Harry H. Kennedy did then and there, with intent to injure and defraud the said national banking association, knowingly, unlawfully and fraudulently wilfully misapply the same, in that he then and there surrendered and delivered the same to the said Nelson F. Evans, without receiving therefor for the said bank the said

sum of five thousand dollars, or any part thereof; and the said Nelson F. Evans did then and there knowingly and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to wilfully misapply the said funds and credits of the said national banking association, as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

* * * * * * *

29–95 14. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there to wilfully misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, and for the use, benefit and advantage of the said Nelson F. Evans, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of fifteen thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there receive and discount, with the moneys and funds of the said national banking association, a certain promissory note made and drawn by one, to wit, Nelson F. Evans, dated, to wit, Philadelphia, May 5, 1891, for the sum of, to wit, $15,000, due and payable Aug. 8, 1891, at the said bank, and which said promissory note is as follows:

$15,000. PHILAD'A, *May* 5, 1891.

Three months after date I promise to pay to the order of the Spring Garden National bank fifteen thousand dollars, without defalcation, for value received.

NELSON F. EVANS,
1050 *Drexel Building.*

No. —. Due 8, 8, '91.

[On margin of check:] Picture of a female with sword drawn and uplifted shield.

Which said promissory note, when so received and discounted as aforesaid, was not then and there well secured, as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, and which said note was not paid upon maturity or at any other time; and by reason of the same the said national banking association suffered loss of the said sum of fifteen thousand dollars, with intent in him, the said Nelson F. Evans, so aiding and abetting as aforesaid, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

* * * * * * *

96 81. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, and fraudulently aid and abet one Harry H. Kennedy, (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania, which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds, and credits then and there belonging to the said national banking association for the use, benefit, and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association—that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently, and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds, and credits

of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following—that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4042. PHILAD'A, *March* 28, 1891.

The Spring Garden National bank.

Pay to the order of Spring Garden Nat'l bank five thousand dollars.

$5,000.00. NELSON F. EVANS.

[On margin of check:] Nelson F. Evans.

97 81. The said sum of $5,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to daw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $5,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $5,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injuire and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

98 82. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy, (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said asso-

ciation was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of seventy-six hundred & three $\frac{17}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, a further description of which said check or order cannot be here set out for the reason that it has since been returned to the said defendant, Nelson F. Evans.

99-131 82. The said sum of $7,603.17 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $7,603.17, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $7,603.17, so paid as aforesaid had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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132 99. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid,

do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully, and fraudulently aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania, which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided) then and there wilfully to misapply a certain large amount of the moneys, funds, and credits then and there belonging to the said national banking association for the use, benefit, and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association—that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently, and wilfully and with intent to injure and defraud the said national banking association misapply certain of the moneys, funds, and credits of the said national banking association, to wit, the sum of ten hundred ninety-one $\frac{23}{100}$ dollars, in the manner and by the means following—that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4031. PHILAD'A., *Mch* 7, 1891.

The Spring Garden National bank

Pay to the order of Fidelity Ins., Tr. & S. D. Co. ten hundred ninety-one $\frac{23}{100}$ dollars.

$1,091.23. NELSON F. EVANS.

Endorsed: "For deposit to credit of Fidelity Insurance, Trust & Safe Deposit Co. Rob't M. Scott, ass't treas. Received payment through the clearing-house (20)."

[On margin of check:] Nelson F. Evans.

133–137 The said sum of $1,091.23 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,091.23, although as he,

the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,091.23, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply the said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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138 102. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds, and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of one thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4034. PHILAD'A, *M'ch* 14, 1891.

The Spring Garden National bank

Pay to the order of ex'rs est. H. W. Pitkin, dec'd, one thousand dollars.

$1,000. NELSON F. EVANS.

Endorsed: "The Philadelphia Trust, Safe Dep. and Insurance Company, ex'rs est. H. W. Pitkin. E. D. Schooley, ass't treas. For deposit to the credit of the Philad'a Trust, Safe Deposit & Ins. Co. Received payment through the clearing-house May 16, 1891."

[On margin of check:] Nelson F. Evans.

139–153 The said sum of $1,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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154 110. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said asso-

ciation was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4046. PHILAD'A, *April* 4, 1891.

The Spring Garden National bank

Pay to the order of Fidelity Trust, Safe D. & I. Co. five thousand dollars.

$5,000. NELSON F. EVANS.

Endorsed: "For deposit to the credit of Fidelity Trust, Safe Deposit & Insurance Co. Chas. Atherton, treasurer. Received payment through the clearing-house (2) April 4, 1891."

[On margin of check:] Nelson F. Evans.

155 The said sum of $5,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $5,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $5,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to

willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

156 III. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit, and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of fifty-five hundred sixty-three $\frac{25}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4047. PHILAD'A, *April* 9, 1891.

The Spring Garden National bank

Pay to the order of E. R. Watson, cash'r, fifty-five hundred sixty-three (C) $\frac{25}{100}$ dollars.

$5,563.25. NELSON F. EVANS.

Endorsed: E. R. Watson, c'r Northern National Bank of Philadelphia.

[On margin of check:] Nelson F. Evans.

157–161 The said sum of $5,563.25 being in excess of all sums and amounts which the said Nelson F. Evans, was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $5,563.25, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans, then and there well knew, the said sum of $5,563.25, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national building association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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162 114. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking associa-

tion aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of five thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4049. PHILAD'A, *April* 13, 1891.

The Spring Garden National bank

Pay to the order of Spring Garden Nat'l bank five thousand (C) dollars.

$5,000. NELSON F. EVANS.

[On margin of check:] Nelson F. Evans.

163–167 The said sum of $5,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $5,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $5,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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168 117. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy

being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of one thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4051. PHILAD'A, *April* 15, 1891.

The Spring Garden National bank

Pay to the order of W. L. Dubois, Tr., one thousand dollars.
$1,000.00. NELSON F. EVANS.

Endorsed: "Received payment through the clearing-house April 16, 1891. For deposit to the credit of the Philad'a Trust, Safe Deposit & Ins. Co."

[On margin of check:] Nelson F. Evans.

169–175 The said sum of $1,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and

the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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176 121. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid, and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of one hundred thirty-eight $\frac{12}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4055. PHILAD'A, *April* 21, 1891.

The Spring Garden National bank

Pay to the order of Fidelity Ins., Tr. & Safe Dep. Co. one hundred thirty-eight $\frac{12}{100}$ dollars.
$138.12. NELSON F. EVANS.

Endorsed: "For deposit to the credit of Fidelity Insurance, Trust & Safe Deposit Co. Chas. Atherton, treasurer. Received payment through the clearing-house (20)."

[On margin of check:] Nelson F. Evans.

177–181 The said sum of $138.12 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $138.12, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $138.12, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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182 124. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present, that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Phila-

delphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of three hundred one $\frac{67}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 4058. PHILAD'A, *May* 1, 1891.

The Spring Garden National bank

Pay to the order of Penn National bank three hundred one $\frac{67}{100}$ dollars.

301.67. NELSON F. EVANS.

Endorsed: "Received payment through the clearing-house (nine)."

[On margin of check:] Nelson F. Evans.

183–193 The said sum of $301.67 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $301.67, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $301.67, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds

and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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194 130. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of two thousand and ten dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

$2,010. PHILAD'A, *April* 1, 1891.

One month after date I promise to pay to the order of Francis W. Kennedy, without grace, two thousand and ten dollars, at the Spring Garden National bank, without defalcation, value received.

No. —. Due ——. NELSON F. EVANS.

Endorsed: "Francis W. Kennedy, for collection and credit the Fidelity Insurance, Trust and Safe Deposit Co. Received payment through the clearing-house (20)."

195 The said sum of $2,010 being in excess of all sums and amounts which the said Nelson F. Evans was then and there

entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $2,010, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $2,010, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

196 131. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy, (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of sixteen hundred & eighty-three $\frac{50}{100}$ dollars, in the manner and by the means fol-

lowing: that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Francis W. Kennedy, president, which check or order was as follows:

$1,683.50. PHILAD'A, *May* 1, 1891.

The Spring Garden National bank

Pay to Penn Trust Co. or bearer sixteen hundred & eighty-three $\frac{50}{100}$ dollars.

Charge N. F. Evans.

F. W. K., *Pt.*

197 The said sum of $1,683.50 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,683.50, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,683.50, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

198 132. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress

in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of five hundred & sixteen $\frac{25}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Francis W. Kennedy, president, which said check or order was as follows:

$516.25. PHILAD'A, *May* 1, 1891.

The Spring Garden National bank

Pay to interest or bearer five hundred & sixteen $\frac{25}{100}$ dollars.
Charge N. F. Evans. F. W. K., *Pt.*

199–203 The said sum of $516.25 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $516.25, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $516.25, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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204 135. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of twenty-two hundred and fifty dollars, in the manner and by the means following: that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

$2,250.00. SAN FRANCISCO, *Feb.* 16, 1891.

The Spring Garden National bank

At ten days' sight pay to the order of Wells, Fargo & Co. twenty-two hundred and fifty dollars, value received, and charge to account of—

By ISREAL W. KNOX, *F. Ag't.*

To B. A. Mitchell, Jr., sec't'y, No. 1050 Drexel building, Philad'a Pa.

Endorsed: "Pay Tradesmen's National bank or order, for collection for account of Wells, Fargo & Co. Received payment through the clearing-house (14)."

205–207 The said sum of $2,250 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the

said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $2,250, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $2,250, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to wilfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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208 137. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania; which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of fifteen hundred dol-

lars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 307. PHILAD'A, *Mch* 23, 1891.

Spring Garden National bank

Pay to cash or bearer fifteen hundred dollars.
$1,500. NELSON F. EVANS, *Treas.*,
Per M.

Endorsed: "F. W. K."

[On margin of check:] Spring Garden National bank, 12th & Spring Garden streets.

209–213 The said sum of $1,500 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,500, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,500, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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214 140. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden

National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of fifteen hundred dollars, in the manner and by the means following: that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. —. PHILAD'A, *Apl* 4, 1891.

Spring Garden National bank

Pay to cash or bearer fifteen hundred dollars.
$1,500. NELSON F. EVANS, *Tr.*

Endorsed: "F. W. K."

[On margin of check:] Spring Garden National bank, 12th & Spring Garden streets.

215–217 The said sum of $1,500 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,500, although as he, the said Harry H. Kennedy and the said Nelson F. Evans then and there well knew, the said sum of $1,500, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there

knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

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218 142. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of fifteen hundred dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 312. PHILAD'A, *Ap'l* 25, 1891.

Spring Garden National bank

Pay to cash (C) or bearer fifteen hundred dollars.

$1,500. NELSON F. EVANS, *Treas.*,
Per MITCHELL.

[On margin of check:] Spring Garden National bank, 12th & Spring Garden streets.

219 The said sum of $1,500 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,500, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,500, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

220 143. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking

association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of one thousand dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 313. PHILAD'A, *April* 30, 1891.

Spring Garden National bank

Pay to cash, or bearer one thousand dollars.
$1,000. NELSON F. EVANS, *Treas.*,
Per MITCHELL.

Endorsed: "F. W. K."

[On margin of check:] Spring Garden National bank, 12th & Spring Garden streets.

221–223 The said sum of $1,000 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $1,000, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $1,000, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

* * * * * * *

224 145. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy

being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business at Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking assocation, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of twenty-five hundred dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier, did then and there cause to be paid to and upon a certain check or order made and drawn by the said Nelson F. Evans, which said check or order was as follows:

No. 314. PHILAD'A, *Ap'l* 30, 1891.

Spring Garden National bank

Pay to Spring Garden Nat'l bank or order twenty-five hundred dollars.

$2,500. NELSON F. EVANS, *Tr.*

[On margin of check:] Spring Garden National bank, 12th & Spring Garden streets.

225 The said sum of $2,500 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $2,500, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $2,500, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the

said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association: contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

226 146. And the grand inquest aforesaid, inquiring as aforesaid, upon their respective oaths and affirmations aforesaid, do further present that heretofore, to wit, on the eighth day of May, A. D. 1891, the said Nelson F. Evans, yeoman, late of the district aforesaid, at the district aforesaid and within the jurisdiction of this court, did knowingly, wilfully, unlawfully and fraudulently, aid and abet one Harry H. Kennedy (the said Harry H. Kennedy being then and there cashier of a certain national banking association, then and there known and designated as the Spring Garden National bank, in the State of Pennsylvania: which said association had been theretofore created and organized under and by virtue of acts of Congress in such case made and provided, and which said association was then and there acting and carrying on a banking business in Philadelphia, in the said district, under the acts of Congress in such case made and provided,) then and there wilfully to misapply a certain large amount of the moneys, funds and credits, then and there belonging to the said national banking association, for the use, benefit and advantage of the said Nelson F. Evans, then and there with intent in him, the said Nelson F. Evans to injure and defraud the said national banking association; that is to say, the said Harry H. Kennedy, late of the district aforesaid, heretofore, to wit, on the eighth day of May, in the year aforesaid, at the district aforesaid, and within the jurisdiction of this court, being then and there cashier of the said national banking association aforesaid, did knowingly, unlawfully, fraudulently and wilfully, and with intent to injure and defraud the said national banking association, misapply certain of the moneys, funds and credits of the said national banking association, to wit, the sum of four hundred & two $\frac{50}{100}$ dollars, in the manner and by the means following; that is to say, that he, the said Harry H. Kennedy, as such cashier did then and there cause to be paid to and upon a certain check or order made and drawn by the said Francis W. Kennedy, president, which said check or order was as follows:

$402.50. PHILAD'A, *May* 1, 1891.

The Spring Garden National bank

Pay to Penn Trust Co. or bearer four hundred & two $\frac{50}{100}$ dollars.
Charge N. F. Evans, treas.

F. W. K., *Pt.*

227 The said sum of $402.50 being in excess of all sums and amounts which the said Nelson F. Evans was then and there entitled to draw, and have paid out of the moneys and funds of the said national banking association, he, the said Harry H. Kennedy, unlawfully, wickedly and fraudulently devising and intending that the said Nelson F. Evans should appropriate and convert to his own use the said sum of $402.50, although as he, the said Harry H. Kennedy, and the said Nelson F. Evans then and there well knew, the said sum of $402.50, so paid as aforesaid, had not been deposited, and was not there on deposit with the said national banking association, by the said Nelson F. Evans, and was not then and there due and owing by the said association to the said Nelson F. Evans, and the repayment thereof to the said national banking association was not then and there in any way secured, and the said Nelson F. Evans had no manner and right of title to the same; and the said Nelson F. Evans did then and there knowingly, willfully and unlawfully, aid and abet the said Harry H. Kennedy, then and there cashier as aforesaid, knowingly, unlawfully and fraudulently, to willfully misapply said moneys, funds and credits of the said national banking association as aforesaid, then and there, with intent in him, the said Nelson F. Evans, to injure and defraud the said national banking association; contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the United States of America.

ROBERT RALSTEN,
Acting U. S. Attorney.

16 May, 1892.

228 *Summary (Indictment 50).*

Count 1. General count, abstraction of the funds of a national banking association by a director thereof.

" 2. General count, aiding and abetting the president of a national banking association to misapply the moneys, funds, and credits thereof.

" 3. General count, aiding and abetting the cashier of a national banking association to misapply the moneys, funds, and credits thereof.

Counts 4 to 6, inclusive. Director of a national banking association abstracting moneys, etc., thereof (Keystone and Fourth Street checks).

Count 7. General count, conspiracy between officers of a national banking association (N. F. E., F. W. K., H. H. K.) to wilfully misapply the moneys, funds, and credits thereof.

Counts 8 to 13, inclusive. Aiding and abetting the cashier of a national banking association to misapply the funds thereof by surrendering the notes without receiving value therefor.

Count 14. Aiding and abetting the cashier of a national banking association to misapply the funds thereof by discounting an unsecured note (N. F. E. note, $15,000, discounted May 8, 1891).

" 15. Director of national banking association abstracting moneys, etc., thereof—overdraft (check 4042).

Counts 16 to 80, inclusive. Director of a national banking association abstracting the moneys, funds, credits thereof—overdrafts checks on personal and treas. accounts.

Count 81. Aiding and abetting the cashier of a national banking association to misapply the funds thereof—overdrafts (check 4042).

Counts 82 to 146, inclusive. Aiding and abetting the cashier of a national banking association to misapply the funds thereof—overdrafts (checks on personal and treas. accounts).

229 [Endorsed:] No. 50. May sessions, 1892. District court United States, eastern district of Pennsylvania. The United States of America *vs.* Nelson F. Evans. True bill. Harry W. Jayne, foreman. Indictment: Misapplication of the funds of a national banking association by an officer thereof; aiding & abetting in the misapplication of the funds of a national banking association by an officer thereof; conspiracy to misapply funds of a national banking association by officers thereof. Filed May 17, 1892. Witnesses: James Glentworth, A. R. Barrett, Walter P. Faust, Harry C. Jones, Geo. W. Schouler, Wm. T. Thompson.

230 In the District Court of the United States in and for the Eastern District of Pennsylvania, of May Sessions, 1892.

UNITED STATES OF AMERICA
vs.
NELSON F. EVANS. } No. 50.

Defendant charged with willfully misapplying certain of the funds, &c., of a national banking association by a director thereof.

And now, this fifth day of December, A. D. 1892, the United States of America, by Ellery P. Ingham, its attorney in and for the eastern district of Pennsylvania, comes and says that it will no further prosecute its said indictment against the said Nelson F. Evans as to any of the counts thereof except the 8th, 9th, 10th, 14th, 81st, 82nd, 99th, 102nd, 110th, 111th, 114th, 117th, 121st, 124th, 130th, 131st, 132nd, 135th, 137th, 140th, 142nd, 143rd, 145th, & 146th.

ELLERY P. INGHAM, *U. S. Att'y.*

Whereupon it is considered and adjudged by the court here that the said United States take nothing by the said bill as to all the counts thereof other than those above stated, and that the said defendant as to same do go hence without day.

[Endorsed:] Indictment. No. 50. May sess., 1892. United States of America *vs.* Nelson F. Evans. *Nolle prosequi* as to certain counts of the indictment herein stated. Judgment entered December 5, 1892. Ellery P. Ingham, U. S. attorney. Filed Dec. 5, 1892.

231 And afterwards, to wit, on the day and year last mentioned aforesaid, the defendant, Nelson F. Evans, by Hampton L. Carson, Esq., his counsel, demurs to the remaining counts of the bill of indictment aforesaid (other than the eighty-first count) in the words and figures following, to wit:

232 UNITED STATES OF AMERICA, *ss:*

District Court of the United States, Eastern District of Pennsylvania.

UNITED STATES, by Indictment,
v.
NELSON F. EVANS. } May Term, 1892. No. 50.

Demurrer to Counts in said Indictment.

And the said Nelson F. Evans, in his own proper person, personally cometh into court here, and, having heard the said indictment read, says that the first, second, third, and fourth counts in said indictment and the matters therein contained and set forth in manner and form as the same are therein stated and set forth are not sufficient in law, and that the said Nelson F. Evans is not bound by the law of the land to answer the same; that said counts in said indictment are defective in this:

The first count is defective in that it simply avers a willful misapplication of the monies, funds, and credits of the Spring Garden National bank by the defendant, as a director, with the intent to defraud the association, without aver-ing how the application was made, and that it was an unlawful one, and without specifying the means whereby said alleged misapplication was made and showing that they were unlawful.

233 The second count is defective in that it charges a conspiracy and fails to set forth by sufficint and necessary descriptive averments, either that the object of the conspiracy was a crime against the United States, there being no specification of the means of said alleged misapplication; and, further, there is no averment that the means resorted to in pursuance of said alleged conspiracy were crimes against the United States, nor is there any specification or description of the means themselves.

The third count is defective in that it charges the defendant with aiding and abetting the president of the Spring Garden National bank to misapply the funds, credits, and monies of the association without aver-ing how the application was made, and that it was an unlawful one, and without specifying the means whereby said alleged misapplication was made and showing that they were unlawful.

The fourth count is defective in that it charges the defendant with

aiding and abetting the cashier of the Spring Garden National bank to misapply the funds, monies, and credits of the association without averring how the application was made, and that it was an unlawful one, and without specifying the means whereby said
234 alleged misapplication was made and showing that they were unlawful.

And the said Nelson F. Evans, in his own proper person, &c., says that the fifth, tenth, and eleventh counts A are bad, in that there is no averment that the check given by the defendant upon the Keystone National bank, dated March 17th, 1891, for $15,333.35, to the order of the Spring Garden National bank, was presented by the latter to the former for payment, and that payment thereof was refused, and that the bank thereby became a loser.

And the said Nelson F. Evans, in his own proper person, &c., says that the sixth, seventh, eighth, ninth, twelfth, and thirteenth counts A are bad, in that there is no averment that the said checks therein described were not paid, or that the respective endorsements thereon that they were paid through the clearing-house were false, or that the said endorsements were made or permitted to be made by the defendant with the knowledge of its falsity and with the intent to defraud the bank, or that the Spring Garden bank was damaged by the transaction.

And the said Nelson F. Evans, in his own proper person, comes, &c., and says that counts A 20, B 14, C 59 and C 113, and A 16 and B 10 are bad, in that there is no averment that the president or cashier of the Spring Garden National bank, in discounting, as president or as cashier, the various notes therein described, acted
235 in excess of their powers or outside of their regular duties; nor is there any averment that the president or the cashier was not the duly authorized officer of the said bank to discount paper; nor is there any averment that said discounts were procured by any fraudulent means; nor is there any averment that the said Nelson F. Evans was at the time of the said discounts insolvent or knew himself to be so.

And the said Nelson F. Evans, in his own proper —, comes, &c., and says that counts A 14, 15, 16, B 8, 9, and 10 are defective, in that there is no averment that the said defendant did not receive said notes as agent for collection or to secure their renewal and subsequently failed to account for the same to the Spring Garden National bank, either as to proceeds or renewals; and, further, because there is no averment that the bank did not, either at the time of surrender or at any subsequent time, receive security value or renewal notes therefor; and, further, because there is no averment that the bank has been in any manner a loser thereby.

And the said Nelson F. Evans, in his own proper person, comes, &c., and says that counts A 22, 39, 42, 50, 51, 54, 57, 61, 72, 71, 64, 70, 75, 77, 80, 82, 83, 85, 86, 88, 105, 108, 116, 117, 120, 123, 127, 136, 138, 130, 137, 141, 143, 146, 148, 149, 151, 152, B 82, 99, 102, 110, 111, 114, 117, 121, 130, 132, 124, 131, 135, 137, 140, 142, 143, 145, 146 are
236 defective, in that there is no averment that the overdrafts complained of were not according to the usual and customary

course of banking or contrary to the practice and contract between the said defendant and the Spring Garden National bank, or that they were not loans, and that interest was not charged thereon, and that they have not since been paid, and that the bank is a loser thereby.

And the said Nelson F. Evans, in his own proper person, comes, &c., and says that counts Nos. 70, 71, 86, 137, 138, and 152 A and B 131, 132, and 146 are bad, because there is no averment that the said orders or charges against the said Nelson F. Evans, which on their face, as displayed in said counts, were drawn and signed by Francis W. Kennedy as president, were made with the knowledge or consent or with the subsequent assent of the defendant, or that he had obtained or did obtain any monies thereon.

Wherefore he prays judgment for want of a sufficient indictment in behalf of those accounts, and that by the court he may be discharged and dismissed from the said premises in this behalf.

NELSON F. EVANS.
HAMPTON L. CARSON,
Pro Defendant.

237 And afterwards, to wit, on the day and year last mentioned aforesaid, arguments having been heard and due consideration having been given thereto, the court is of opinion that the said counts of the United States before in their bill of indictment set forth and the matters therein contained are sufficient in law to have and maintain the bill of indictment of the said the United States aforesaid as to the said counts against the defendant, Nelson F. Evans, aforesaid.

238 Whereupon Alexander P. Colesberry, Esquire, the marshal of the said district, is commanded that he apprehend and take the body of the said Nelson F. Evans to answer the premises, which said indictment the said the Honorable William Butler, judge of the said the district court of the United States of America for the eastern district of Pennsylvania, afterwards, to wit, at the May sessions of the said the district court of the United States, held at Philadelphia, as aforesaid, on the seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-two, did deliver here in court of record in form of law to be determined, and thereupon, at the November sessions of the district court of the United States for the eastern district of Pennsylvania, held as aforesaid on the fifth day of December, in the year of our Lord one thousand eight hundred and ninety-two, before the said the Honorable William Butler, judge as aforesaid, comes the said Nelson F. Evans, appearing at the bar of the court in his proper person, who is committed to the said marshal, and he, the said Nelson F. Evans, concerning the premises in the said indictment above specified

239 and charged on him as above, being asked in what manner he would be acquitted thereof, says that he is not guilty thereof, and hereupon, for good or ill, he puts himself upon the country, and Ellery P. Ingham, Esquire, attorney of the United States of America for the eastern district of Pennsylvania, in this

behalf does the like; therefore let a jury immediately come before the said the Honorable William Butler, the said judge above named here, by whom the truth of the matter will be better known and who have no affinity to the said Nelson F. Evans, to recognise upon their oaths and affirmations whether the said Nelson F. Evans be guilty of the premises in the indictment aforesaid above specified or not, because as well the said Ellery P. Ingham, Esquire, who prosecutes for the said the United States of America in this behalf as aforesaid as the said Nelson F. Evans have put themselves upon that jury, & the jurors by the said marshal for this purpose impanelled and returned, to wit, Henry Small, Joseph M. Glick, Samuel M. Hertzler, Francis C. Dade, Sr.; Ephraim Kaufman, Harrison J. Boyer, George S. Rowbotham, Charles Palmer, Thomas J. Bateman, Joseph M. Cranston, Howard M. Levering, A. Jackson Ely, being called, come, who, being chosen, tried, sworn, and affirmed to speak the truth of and upon the premises aforesaid in the indictment aforesaid above specified, do say, upon their oaths and affirmation, that the said Nelson F. Evans is guilty of the premises in the indictment aforesaid above specified in manner & form as
240 he stands charged in counts 8, 9, 10, 14, 81, 82, 99, 102, 110, 111, 114, 117, 121, 124, 130, 131, 132, 135, 137, 140, 142, 143, 145, & 146 of the indictment; and thereupon, at the November sessions of the district court of the United States for the said district, held, as aforesaid, on the twelfth day of December, in the year of our Lord one thousand eight hundred and ninety-two, before the said the Honorable William Butler, judge as aforesaid, comes the said Nelson F. Evans, by his counsel, Hampton L. Carson, and says that the verdict aforesaid so as aforesaid found and rendered against the said Nelson F. Evans ought not to stand, and that judgment thereon ought to be arrested and that a new trial of the issue ought to be granted.

241 United States District Court, Eastern District of Pennsylvania, *ss.*

UNITED STATES)
vs.
NELSON F. EVANS.)

And now, this twelfth day of December, A. D. 1892, the said defendant comes into court and, through his counsel, moves for a new trial and assigns the following reasons in support of said motion:

First. Because in the order of proof evidence of the general condition of the bank was given before the defendant's connection with that condition had been specifically shown.

Second. Because evidence of the general condition of ruin of the bank was admitted from the lips of the receiver, who had no personal knowledge of his own before the defendant had been specifically connected with that condition except generally as a director.

Third. Because evidence of the indebtedness of other directors to

the bank was allowed to be given without showing specifically that the defendant knew the state of their accounts.

Fourth. Because evidence to the present value of the Bunker Hill mine was excluded.

Fifth. Because evidence of the value of the mine in the years 1886, 1887, 1889, and 1890 was excluded.

Sixth. Because the receiver was not permitted to testify
242 on cross-examination as to the negotiations pending for the leasing of the mine.

Seventh. Because evidence of deposit slips and charges made against the account of the said defendant upon papers made by Mr. Kennedy, the president of the bank, were admitted in evidence, all of said papers being made in the absence of Mr. Evans and without showing that he had any knowledge thereof.

Eighth. Because evidence of the stamping of the check- as paid through the clearing-house was admitted, said checks being handed back to the cashier *to* the receiving teller admittedly in the absence of Mr. Evans and without proof of his knowledge of the stamping and return of said checks.

Ninth. Because the checks which were altered without the authority or knowledge of Mr. Evans were admitted in evidence.

Tenth. Because the discount of the Nettleton notes upon May 7th, 1891, was not shown to be done with the knowledge of Mr. Evans, nor were the proceeds traced to his credit.

Eleventh. Because evidence from Mr. Drew, the bank examiner, of the form of the reports furnished to the Comptroller of the Currency and showing the existence of overdrafts as a regular item of the resources of the bank was excluded.

Twelfth. Because it was stated in the opening of the United States that Francis W. Kennedy, president, and H. H. Kennedy, cashier, had pleaded guilty because religious prejudice was introduced into the case.

243 UNITED STATES OF AMERICA, *ss:*

District Court of the United States, Eastern District of Pennsylvania, May Term, 1892.

UNITED STATES, by Indictment,
vs.
NELSON F. EVANS. } No. 50, 51.

Motion in Arrest of Judgment.

And the said Nelson F. Evans moves in arrest of judgment in the above case and assigns the following reasons in support of said motion:

The first count is defective in that it simply avers a willful misapplication of the monies, funds, and credits of the Spring Garden National bank by the defendant, as a director, with the intent to defraud the association, without aver-ing how the application was made and that it was an unlawful one, and without specifying the means

whereby said alleged misapplication was made and showing that they were unlawful.

The second count is defective in that it charges a conspiracy and fails to set forth by sufficient and necessary descriptive averments either that the object of the conspiracy was a crime against
244 the United States, there being no specification of the means of said alleged misapplication; and, further, there is no averment that the means resorted to in prosecution of said alleged conspiracy were crimes against the United States, nor is there any specification or description of the means themselves.

The third count is defective in that it charges the defendant with aiding and abetting the president of the Spring Garden National bank to misapply the funds, credits, and monies of the association, without averring how the application was made and that it was an unlawful one, and without specifying the means whereby said alleged misapplication was made and showing that they were unlawful.

The fourth count is defective in that it charges the defendant with aiding and abetting the cashier of the Spring Garden National bank to misapply the funds, monies, and credits of the association, without averring how the application was made and that it was an unlawful one, and without specifying the means whereby said alleged misapplication was made and showing that they were unlawful.

That the fifth, tenth, and eleventh counts A are bad in that there is no averment that the check given by the defendant upon the Keystone National bank, dated March 17th, 1891, for $15,333.35 to the order of the Spring Garden National bank was presented by the latter to the former for payment, and that payment thereof was refused, and that the bank thereby became a loser.

245 That the six-, seventh, eighth, ninth, twelfth, and thirteenth counts A are bad in that there is no averment that the said checks therein described were not paid, or that the respective endorsements thereon that they were paid through the clearing-house were false, or that the said endorsements were made or permitted to be made by the defendant with the knowledge of its falsity and with the intent to defraud the bank, or that the Spring Garden bank was damaged by the transaction.

That counts A 20, B 14, C 59, and C 113 and A 16 and B 10 are bad in that there is no averment that the president or cashier of the Spring Garden National bank in discounting as president or as cashier the various notes therein described acted in excess of their powers or outside of their regular duties, nor is there any averment that the president or the cashier was not the duly authorized officer of the said bank to discount paper, nor is there any averment that said discounts were procured by any fraudulent means, nor is there any averment that the said Nelson F. Evans was at the time of the said discounts insolvent or knew himself to be so.

That counts A 14, 15, 16, B 8, 9, and 10 are defective in that there is no averment that the said defendant did not receive said notes as

agent for collection or to secure their renewal, and subsequently failed to account for the same to the Spring Garden National
246 bank, either as to proceeds or renewals, and further because there is no averment that the bank did not, either at the time of surrender or at any subsequent time, receive security value or renewal notes therefor, and further because there is no averment that the bank has been in any manner a loser thereby.

That counts A 22, 39, 42, 50, 51, 54, 57, 61, 72, 71, 64, 70, 75, 77, 80, 82, 83, 85, 86, 88, 105, 108, 116, 117, 120, 123, 127, 136, 138, 130, 137, 141, 143, 146, 148, 149, 151, 152, B 82, 99, 102, 110, 111, 114, 117, 121, 130, 132, 124, 131, 135, 137, 140, 142, 143, 145, 146 are defective in that there is no averment that the overdrafts complained of were not according to the usual and customary course of banking, or contrary to the practice and contract between the said defendant and the Spring Garden National bank, or that they were not loans, and that interest was not charged thereon, and that they have not since been paid, and that the bank is a loser thereby.

That counts Nos. 70, 71, 86, 137, 138, and 152 A and B 131, 132, and 146 are bad because there is no averment that the said orders or charges against the said Nelson F. Evans which on their face, as displayed in said counts, were drawn and signed by Francis W. Kennedy as president were made with the knowledge or consent or with the subsequent assent of the defendant, or that he had obtained or did obtain any monies thereon.

HAMPTON L. CARSON.

247 And thereupon, at the November sessions of the said the district court of the United States, held, as aforesaid, on the sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-two, before the said the Honorable William Butler, judge as aforesaid, comes the said Nelson F. Evans, appearing as aforesaid, who is committed as aforesaid; and thereupon, arguments having been heard and due consideration having been given to the subject, the court is of opinion that the verdict aforesaid ought to stand, and that a new trial ought not to be granted, but that judgment ought to be entered and given on said verdict.

Whereupon the motion for a new trial is refused and the motion in arrest of judgment overruled; and

Thereupon forthwith, all and singular the premises being seen and by the court here fully understood, it is considered and adjudged that the defendant, Nelson F. Evans, be imprisoned and confined in the Eastern penitentiary of the Commonwealth of Pennsylvania for the term of five years; that he pay the costs of prosecution and stand committed until judgment be fully complied with, and that he be subject in all respects to the same discipline and treatment as convicts sentenced by the courts of the said Commonwealth.

248 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Charles S. Lincoln, clerk of the district court of the United States for the eastern district of Pennsylvania, do hereby certify that the annexed and foregoing is a true and faithful copy of the record and proceedings in the said court in a certain criminal cause therein lately depending, to wit, indictment No. 50, May sessions, 1892, The United States of America against Nelson F. Evans, defendant, as full and entire as the same are now remaining among the records of the said court in my office, with copy of petition for writ of error, of the assignment of errors, and of the bond on writ of error.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said district court, at Philadelphia, this eighteenth day of April, in the year of our Lord one thousand eight hundred and ninety-three, and in the one hundred and seventeenth year of the Independence of the United States

Seal of the District Court of the United States, E. D. Penna.

CHARLES S. LINCOLN,
Clerk District Court U. S.

[Endorsed:] U. S. district court. The United States of America *vs.* Nelson F. Evans. Indictment No. 50, May sess., 1892. Certified copy of record and proceedings of the district court.

249 In the Supreme Court of the United States, October Term, 1892.

EVANS
v.
UNITED STATES. } Nos. 1329 & 1330.

It is hereby stipulated and agreed that the clerk of the Supreme Court of the United States in printing the record shall print only such portions of the indictments in the above cases as were not nol. prossed—that is to say, that there shall be printed of the indictment No. 50, of May sessions, 1892, in the district
H. L. C. court for the eastern district of Pennsylvania, the following counts: 8, 9, 10, 14, 81, 82, 99, 102, 110, 111, 114, 117, 121, 124, 130, 131, 132, 135, 137, 140, 142, 143, 145, and 146, and there shall be printed of the indictment in case No. 51, of May sessions, 1892, in the district court for the eastern district of Pennsylvania, the following counts, to wit: 1, 2, 3, 4, 5, 6, 7, 8,
H. L. C. 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 39, 42, 50, 51, 54, 57, 61, 64, 70, 71, 72, 75, 77, 80, 82, 83, 85, 86, 87, 88, 105, 108, 116, 117, 120, 123, 127, 130, 136, 137, 138, 141, 143, 146, 148, 149, 151 and 152.

And it is further stipulated and agreed that the clerk shall print the demurrers filed to the foregoing counts in the indictments, and

also the sentence pronounced by the court, and the motion in arrest of judgment, together with the assignments of error as filed.

May 29, 1893.

HAMPTON L. CARSON,
Att'y for Nelson F. Evans.
LAWRENCE MAXWELL, Jr.,
Solicitor General.

250 [Endorsed:] Case No. 15,299 & 15,300. Supreme Court U. S., October Term, 1893. Term No., 922 & 923. Nelson F. Evans, P. E., — The United States, and Same *vs.* Same. Stipulation to print certain parts of transcripts of records. Filed May 31, 1893.

Endorsed on cover: Case No. 15,299. E. Pennsylvania D. C. U. S. Term No., 922. Nelson F. Evans, plaintiff in error, *vs.* The United States. Filed April 21, 1893.